



June 22, 1999

Ms. Amy Sims
Assistant City Attorney
Office of City Attorney
P.O. Box 2000
Lubbock, Texas 79457

OR99-1720

Dear Ms. Sims:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125130

The City of Lubbock (the "city") received a request for "any accomadations [sic] or disciplinary actions given to Lubbock Police Officer Tracy Taylor." You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code and you submit the requested information to this office. We have considered the exception you claim and reviewed the submitted information.

You assert that section 552.103 of the Government Code excepts from disclosure the requested information. Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

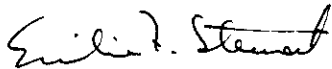
A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). In Open Records Decision No. 638 (1996), this

office said that a governmental body may show that litigation is reasonably anticipated when it receives a claim letter that it represents to be in compliance with the Texas Tort Claims Act (the "TTCA"), Chapter 101 of the Civil Practice and Remedies Code. The city has received a notice of claim and, you represent that the notice is in compliance with the TTCA. You have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). The requested records therefore may be withheld from public disclosure.

We note that if the opposing party in the anticipated litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). However, if the records contain information that is confidential by law, you must not release such information even at the conclusion of the litigation. Gov't Code §§ 552.101, .352.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# 125130

Encl: Submitted documents

cc: Mr. Russ Poteet
KAMC TV
1201 84th Street
Lubbock, Texas 79423
(w/o enclosures)